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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,870	10/26/2001	Holger Warth	Mo-6717/LeA 34,668	1030
157	7590	03/29/2004	EXAMINER	
BAYER POLYMERS LLC 100 BAYER ROAD PITTSBURGH, PA 15205			BUTTNER, DAVID J	
			ART UNIT	PAPER NUMBER
			1712	
DATE MAILED: 03/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,870

Applicant(s)

WARTH ET AL.

Examiner

David Buttner

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 limits the group of Vinyl cyanides, methacrylic esters, unsaturated acids and derivatives of the acid to being present in amount of 1-50 parts of polymer B. However, methacrylic esters were earlier listed as being possibly present in amount of 50-99 parts. The two amounts are inconsistent, which is intended?

Claims 1-10 are rejected under 35 USC 102(e) as being anticipated by or in the alternative under 35 USC as obvious over Nodera '443.

Nodera exemplifies (Nos. 5, 6,) blends of PH, HIPS, Metablen S2001, talc, antistatic agent and flame retardant. Metablen S2001 is one of applicant's preferred silicone-acrylate grafts (page 15, line 24 of spec.) HIPS is a polymer based on styrene and qualifies as applicant's (B). Nodera (col 4 line 63) also lists acrylonitrile/styrene copolymer as an alternative to HIPS. Glass fibers (col. 10, line 45) are listed as an alternative to talc.

"Consisting essentially of "does not exclude the antistatic agent or flame retardant. Applicant's specification must be consulted to construe "consisting essentially of " (In re Herz 190 USPQ 461). Applicant calls for flame retardant (page 3 line 18 and antistatic agent (page 13 line 30). Applicant cannot now insist these additives materially affect his invention.

Alternatively, it would have been obvious to eliminate an additive as well as its function (MPEP 2144.04 II).

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Claims 1-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the WO 00/12629 Patent.

US 6403683 is relied on as a translation. The reference exemplifies (Nos. 9, 13) blend of PC, ABS, talc, Metablen S2001 and flame retardant. The ABS is based on styrene and acrylonitrile and therefore qualifies as (B). The reference also lists (col. 5, line 58) acrylonitrile/styrene copolymer as an alternative to ABS.

"Consisting essentially of" does not exclude flame retardants and it would have been obvious to remove it if flame retardancy was of no concern.

Claims 1-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the J 11349796 Patent.

The reference exemplifies blends of PC, SAN and silicon/acrylate graft. Oral translation indicates paragraph 19 calls for inorganic filler (termed "bulking agent" by the machine translation). No amount of filler is specified, but it is within ordinary skill to select appropriate amounts.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the J08269314 Patent.

The reference exemplifies blends of PC, PMMA and Metablen S2001 (applicant's silicone graft). Reinforcers, talc etc. can be included (paragraph 56) although amounts are not specified. It would have been within ordinary skill to select appropriate filler amounts.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the J11349796 or J08269314 Patents in view of Nodera '443 or Obayashi '914.

The primary references do not specify amounts for their fillers or name glass fibers as a suitable filler. Nodera (col. 10, line 44,45,63) lists talc, glass fiber etc in amounts of 2-30 pph as suitable filler in similar PC/grafted rubber compositions. Obayashi exemplified the use of glass fiber in similar PC/ grafted rubber compositions.

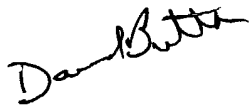
It would have been obvious to use talc or glass fibers as the filler in either of the primary reference compositions in the conventional amounts.

Applicant's arguments filed 1/8/04 have been fully considered but they are not persuasive. Arguments regarding "consisting essentially of " have been answered in the Nodera rejection. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Buttner whose telephone number is (571) 272-1084. The examiner can normally be reached on Weekdays from 10:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1700.

DAVID J. BUTTNER
PRIMARY EXAMINER



D. Buttner/af
March 23, 2004